

From: [Official Information](#)
To: [REDACTED]
Cc: [Official Information](#)
Subject: Part 2 of 2 - LGOIMA 438573 - [REDACTED] - Accessible Properties
Date: Thursday, 5 December 2024 1:45:49 pm
Attachments: [image002.png](#)
[image003.jpg](#)
[image004.jpg](#)
[Signed Agreement Pensioner Housing_Redacted.pdf](#)

Kia ora,

We refer to your information request below. Hamilton City Council provides the following response.

Please see the final part of this LGOIMA request.

We have had to withhold some information from the documents which we are releasing in response to your request. We have applied digital black redactions over the withheld information and have supplied the code to identify the section of the Local Government Official Information and Meetings Act 1987 (LGOIMA) which we are relying on. We have withheld information on the basis that it is necessary to protect the Privacy of natural persons per [section 7\(2\)\(a\)](#) LGOIMA.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Ngaa mihi

Keeley Faulkner

Official Information Advisor & Legal Support Officer

Legal services

Governance & Assurance Team | Partnerships, communication & Maaori

Email: officialinformation@hcc.govt.nz



Hamilton City Council | Private Bag 3010 | Hamilton 3240 | www.hamilton.govt.nz



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I support flexibility at work. While it suits me to send this email now, I don't expect a response outside of your own working hours.

From: Official Information <officialinformation@hcc.govt.nz>

Sent: Friday, November 22, 2024 10:43 AM

To: [REDACTED]

Cc: Official Information <officialinformation@hcc.govt.nz>

Subject: Part 1 of 2 - LGOIMA 438573 - [REDACTED] - Accessible Properties

Kia ora,

We refer to your information request below. Hamilton City Council provides the following response.

Your request:

A brief introduction. [REDACTED] of the Age Friendly Hamilton Steering Group under the auspices of the Hamilton City Council. Our Group is in the process of consultation with community groups/agencies to assist us in finalizing a new Plan, 2025-2028. Louise Hutt is a member of this Group.

One of the themes from the World Health Organization's Age Friendly framework is Housing. Late last year a trio of research students from the Occupational Therapy School of the Otago Polytechnic (based physically in Wintec) undertook a study on the provision of housing for seniors in Hamilton, to supplement what we already knew. In our new Plan under development ([REDACTED], [REDACTED]), we have identified Accessible Properties and Kainga Ora as two key stakeholders in our consultation. The trio of [REDACTED] [REDACTED] also attended the Waikato Housing Initiative's hui recently on housing in this city.

At our most recent regular meeting (Louise was absent), the issue of consultation readiness emerged, in particular in respect to Accessible Properties. It was recommended that I contact you within the HCC to find out more about the agreement that was reached between the HCC and Accessible Properties prior to our meeting with them about past, present and future plans, especially in regard to seniors. Are you able to provide any relevant documentation from when the HCC handed over responsibility for social housing to Accessible Properties?

Our response:

Thank you for your request, please see the attached report that Accessible Properties has provided us for January 2024 – June 2024.

We are still working with Accessible Properties relating to their agreement with us. Once we know we will be providing a response for this part.

Thank you for your patience with us.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Ngaa mihi

Keeley Faulkner

Official Information Advisor & Legal Support Officer

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I support flexibility at work. While it suits me to send this email now, I don't expect a response outside of your own working hours.

From: [REDACTED]

Sent: Thursday, October 31, 2024 1:59 PM

To: [REDACTED]; Anna Casey-Cox <Anna.Casey-Cox@council.hcc.govt.nz>

Cc: [REDACTED]

Louise Hutt <louise.hutt@council.hcc.govt.nz>

Subject: Query - Senior Housing in Hamilton

Kia ora Anna ([REDACTED])

A brief introduction. I am the [REDACTED] Age Friendly Hamilton Steering Group under the auspices of the Hamilton City Council. Our Group is in the process of consultation with community groups/agencies to assist us in finalizing a new Plan, 2025-2028. Louise Hutt is a member of this Group.

One of the themes from the World Health Organization's Age Friendly framework is Housing. Late last year a trio of research students from the Occupational Therapy School of the Otago Polytechnic (based physically in Wintec) undertook a study on the provision of housing for seniors in Hamilton, to supplement what we already knew. In our new Plan under development ([REDACTED]), we have identified Accessible Properties and Kainga Ora as two key stakeholders in

our consultation. The trio of [REDACTED]
[REDACTED] also attended the Waikato Housing Initiative's hui recently on housing in this city.

At our most recent regular meeting (Louise was absent), the issue of consultation readiness emerged, in particular in respect to Accessible Properties. It was recommended that I contact you within the HCC to find out more about the agreement that was reached between the HCC and Accessible Properties prior to our meeting with them about past, present and future plans, especially in regard to seniors. Are you able to provide any relevant documentation from when the HCC handed over responsibility for social housing to Accessible Properties?

We look forward to hearing back from you soon.

Yours sincerely

[REDACTED]
[REDACTED]

**AGREEMENT FOR SALE AND
PURCHASE OF PENSIONER
HOUSING**

between

HAMILTON CITY COUNCIL

and

ACCESSIBLE PROPERTIES NEW ZEALAND LIMITED

AGREEMENT dated

10th December

2015

PARTIES

- (1) HAMILTON CITY COUNCIL ("Vendor")
- (2) ACCESSIBLE PROPERTIES NEW ZEALAND LIMITED ("Purchaser")

BACKGROUND

- A. The Vendor is registered proprietor of the land described in the table below.
- B. The Vendor utilises the land for the purpose of providing housing for pensioners.
- C. The Purchaser has agreed to purchase from the Vendor the land described below, (together the "Property") and to utilise the Property for the provision of Social Housing as such term is described in the encumbrance attached in Part 2 of Schedule 1.
- D. The parties have entered into this agreement to record their arrangement.

AGREEMENT:

Description of property

The Vendor has a number of parcels of land for sale upon the terms set out in this agreement.

The Purchaser offers to purchase those parcels of land as are listed in the table below.

#	LOCATION	LEGAL DESCRIPTION	IDENTIFIER	MINIMUM UNIT NUMBER
1	s7(2)(a) Road, Chartwell	s7(2)(a)		19
2	s7(2)(a) Road, Fairfield			27
3	s7(2)(a) Road, Chartwell			36
4	s7(2)(a) Place Silverdale			35
5	s7(2)(a) Road Dinsdale & s7(2)(a) Street Dinsdale			18

[Handwritten signature]

#	LOCATION	LEGAL DESCRIPTION	IDENTIFIER	MINIMUM UNIT NUMBER
6	s7(2)(a) Avenue Chartwell	s7(2)(a)		6
7	s7(2)(a) Road Saint Andrews & s7(2)(a) Street Saint Andrews			9
8	s7(2)(a) Road Dinsdale			26
9	s7(2)(a) Street Hamilton East & s7(2)(a) Street Hamilton East			40
10	s7(2)(a) Street Frankton s7(2)(a) Road Frankton			18
11	s7(2)(a) Avenue Nawton			34
12	s7(2)(a) Maeroa			12
13	s7(2)(a) Road Enderley			20
14	s7(2)(a) Crescent Maeroa			8
15	s7(2)(a) Crescent Claudelands			19
16	s7(2)(a) Terrace Dinsdale			4
17	s7(2)(a) Street Melville			13
TOTAL PURCHASE PRICE (plus GST if any) – See Clause 12				

GST date:

Settlement date

Settlement Date:

7 March 2016

Deposit:

10% of the purchase price payable to the Vendor's solicitor's trust account within five (5) working days of execution of this agreement by the Vendor and otherwise on the terms set out in the General Terms of Sale

Payment of balance of purchase price:

In accordance with Clause 13 in the Further Terms of Sale and Clause 3 in the General Terms of Sale

Interest rate for late settlement:

12% per annum

Tenancies:

Refer to further conditions of sale

This is a sale by private treaty

It is agreed that the Vendor sells and the Purchaser purchases the Property, and the chattels referred to in the Further Terms of Sale, on the terms set out above, and in the General Terms of Sale and the Further Terms of Sale. For the avoidance of doubt, if there is conflict between the General Terms of Sale and the Further Terms of Sale, the provisions of the Further Terms of Sale will prevail.



FURTHER TERMS OF SALE

1. Nature of Agreement

1.1 The contract for the sale of the Property by the Vendor to the Purchaser evidenced by this agreement shall not exist until it has been signed by the Vendor and either:

- (a)** the Vendor has informed the Purchaser by written notice to the Purchaser or the Purchaser's solicitor that the Vendor accepts the offer; or
- (b)** the Vendor has delivered to the Purchaser a copy of this agreement signed by the Vendor.

2. Chattels

2.1 Included in this sale are all chattels on the Property owned by the Vendor at the date of this agreement which may typically include the stove, fixed floor coverings and light fittings in each unit on the Property.

2.2 The parties acknowledge that the chattels passing under this agreement are not of significant value. The Purchaser further acknowledges that it may be difficult to identify what chattels on the Property are owned by a tenant or tenants of the Property.

3. Purchaser Conditions

3.1 The Purchaser confirms that there are no conditions contained in this agreement for the benefit of the Purchaser.

4. Vendor Conditions

4.1 The Purchaser acknowledges that part of the properties situated at **s7(2)(a)** **s7(2)(a)** Street, Hamilton East is held by the Vendor as lessee under lease number 7289147.2. The Purchaser agrees, on the settlement date, to purchase from the Hamilton City Council (in its capacity as landowner) the fee simple estate of that land (Identifier **s7(2)(a)**) for the sum of \$1,069,566 plus GST if any subject to an encumbrance instrument in the form set out in Part 2 of Schedule 1 to this agreement and otherwise in accordance with the provisions of section 5 of the Hamilton Domain Endowment Act 1979, and completion of the purchase of that fee simple estate by the Purchaser will be a condition of settlement of this agreement.

4.2 For the avoidance of doubt, the purchase price for the freehold interest in the land in identifier **s7(2)(a)** is included in the total purchase price set out in clause 12.



5. Tenancies

- 5.1 The Purchaser acknowledges that the Vendor has provided the Purchaser with a schedule of the tenancies affecting the Property as at the date of this agreement, and that such tenancies are likely to alter from time to time.
- 5.2 The Vendor shall, as close to the settlement date as is reasonably practicable, provide the Purchaser with an updated schedule of tenancies which are in effect at that time.
- 5.3 The Purchaser agrees to take title to the Property subject to all such tenancies.
- 5.4 Rental shall be apportioned on the settlement date and any bonds paid that are held by or under the control of the Vendor in respect of the Property shall be assigned to the control of the Purchaser on the settlement date.
- 5.5 The Vendor shall not create any new tenancies affecting the Property in the period between the date of this agreement and the settlement date without the prior written approval of the Purchaser in each case.
- 5.6 For the avoidance of doubt, the Vendor shall not be obliged to seek new tenants for any part of the Property in the event that any part of the Property becomes vacant.

6. Maintenance Prior to Settlement

- 6.1 During the period between the date of this agreement and the settlement date, the Vendor shall undertake reactive maintenance on the Property and the chattels to ensure that the Property remains in a condition equivalent to that which was in at the date of this agreement (fair wear and tear excepted).
- 6.2 For the avoidance of doubt, the Vendor shall not be under any obligation to replace or renew any part of the Property or the chattels, or to undertake any capital works at any time between the date of this agreement and the settlement date.

7. Title

- 7.1 The Purchaser accepts the title to the Property and will not raise any requisition in respect of it.

8. Memorandum of Encumbrance

- 8.1 The Purchaser acknowledges that, in respect of the property at **s7(2)(a)** Avenue, the property will, at the settlement date, be subject to an encumbrance instrument in the form set out in Part 1 of Schedule 1 to this agreement; and that the remainder of the Property will, at the settlement date, be subject to an encumbrance instrument in the form set out in Part 2 of Schedule 1 to this agreement.



8.2 The Purchaser agrees to take title to the Property subject to the appropriate encumbrance referred to in this clause 8.

9. Warranties

9.1 The warranty contained in clause 6.2(1) of the General Terms of Sale (that the chattels are in reasonable working order) is deleted.

10. Confidentiality

10.1 In this agreement, "Confidential Information" means:

- (a) the terms and conditions of this agreement including but not limited to the purchase price; and
- (b) any information which is not public knowledge and which is obtained from the other party pursuant to or in the course of the Purchaser's investigations of the Property and/or preparation, negotiation or settlement of this agreement.

10.2 The Purchaser agrees that it will not, without the prior written consent of the vendor, use Confidential Information or disclose Confidential Information to any person other than those of its officers, employees and advisers essential to the implementation of the provisions of this agreement.

10.3 The Purchaser will use its best endeavours to ensure those of its officers, employees and advisers to whom Confidential Information is disclosed in terms of this agreement, are aware of and comply with the confidentiality obligations imposed by this clause.

10.4 The obligations under this clause will survive termination or cancellation of this agreement.

10.5 If the Purchaser is required by law or the requirements of the New Zealand Stock Exchange to disclose any Confidential Information:

- (a) it will immediately, and prior to such disclosure, advise the other party; and,
- (b) neither of the parties will make any announcement or disclosure relating to the existence of this agreement or its subject matter or terms except in such form and manner, and at such time, as the parties agree.

11. Entire Agreement

11.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings, representations or warranties (whether written or oral) between the parties which concern the



subject matter of this Agreement. There are no agreements, undertakings, representations or warranties of any of the parties with respect to this agreement other than those expressly set out in this Agreement.

11.2 The Purchaser enters this agreement entirely in reliance on its own judgement and not in reliance on any representations or warranties made by or on behalf of the Vendor.

12. Determination of Purchase Price and Settlement Date

12.1 This agreement, prior to signature by the Vendor, has been submitted by the Purchaser with four options for the sale price and payment terms. The Vendor, prior to signature of this agreement by the Vendor, has deleted three of those options, and the remaining option will determine:

- (a) the amount of the purchase price;
- (b) whether the special provisions in respect of rent increase in clause 14 applies; and
- (c) whether vendor finance in terms of clause 13 ("Vendor Finance") is required.

12.2 The options are set out in the table below, and only the option not deleted forms part of this agreement.

Option Number (Delete three)	Vendor Finance Required (Yes/No)	Rental Increase Required (Yes/No)	Purchase Price (excluding GST if any)
One	No	No	\$16,000,000
Two	Yes	No	\$20,000,000
Three	No	Yes	\$17,500,000
Four	Yes	Yes	\$23,500,000

Where Vendor Finance is required in respect of any of the options, the provisions of clause 13 will apply.

Where the Rental Increase is required, the provisions of clause 14 will apply.

13. Payment of Purchase Price and Vendor Finance

The balance of the Purchase Price will be paid as follows:

13.1 If Vendor Finance is not required, in full in cleared funds on Settlement Date

13.2 If Vendor Finance is required:



- (a) By payment in cleared funds of 20% of the purchase Price less the deposit already paid on the Settlement Date; and
- (b) By the Purchaser executing and delivering to the Vendor on the Settlement Date, a registrable mortgage (ranking in priority only subject to the Encumbrances attached in Schedule 1) of the Property in favour of the Vendor, prepared and to be registered by the Vendor's Solicitors on the terms and conditions set out below and in the Auckland District Law Society fixed sum mortgage memorandum number 2011/4299
 - (i) Term: 3 years from 7 March 2016
 - (ii) Principal Sum: 80% of the Purchase Price
 - (iii) Interest Rate: 0%
 - (iv) Penalty Interest Rate: 15% per annum payable during any period in which the breach subsists
 - (v) Repayment: In full, in cleared funds on 7 March 2019
 - (vi) Compliance with encumbrance – a breach of any of the Purchaser's obligations under the memorandum of encumbrance referred to in clause 8 shall give the Vendor or the right to demand repayment of the Principal Sum if such breach is not remedied within 30 days of notice of the breach.
 - (vii) Financial Covenants -
 - A. The Purchaser shall, throughout the term of the mortgage, continuously comply with all financial covenants given by it from time to time in favour of any trading bank that provides financial accommodation to the Purchaser. A copy of the covenants given by the Purchaser in favour of its current trading bank, being Westpac New Zealand Ltd ("Westpac") are set out below.
 - B. The Purchaser shall not agree to any change to its banking covenants, nor obtain financial accommodation secured against the Purchaser's assets from any trading bank, other than Westpac, without first giving the Vendor not less than five working days' notice of its intention to do so.
 - C. If for any reason demand is made by the Purchaser's bank for the repayment of advances to the Purchaser, and such demand is not remedied within 30 days, then the Vendor shall be entitled to make demand for immediate repayment of the Principal Sum.



Banking covenants in favour of Westpac:

4. During the term of the facilities provided to you by Westpac NZ, you undertake as follows:

a) **Quasi Equity Ratio**

You will maintain Shareholders' Funds of not less than 50.0% of Adjusted Tangible Assets, where:

- *Shareholders' Funds* is your Adjusted Tangible Assets less Adjusted Total Liabilities;
- *Adjusted Tangible Assets* is the aggregate of the book values of all of your assets excluding assets of an intangible nature, advances to shareholders, investments in related and associate companies and future asset re-valuations (except as individually approved by Westpac NZ);
- *Adjusted Total Liabilities* is the aggregate of the book values of all of your liabilities excluding only advances from shareholders and capital contributions provided by SHU.

b) **CFADS Ratio**

You will ensure CFADS for each financial year is at least 1.00 times your Debt Servicing Costs for that financial period, where:

- *CFADS* is EBITD less:
 - (i) your capital expenditure for the relevant period which has not been funded by new debt or equity contributions; and
 - (ii) income tax or other tax paid during that period.
- EBITD* is your net profit before Funding Costs, depreciation, income tax and Extraordinaries for the relevant financial period but after payments and other benefits to directors and shareholders (in any form including advances) for the relevant financial period;
- Debt Servicing Costs* are the aggregate of all scheduled principal repayments (excluding voluntary prepayments) and Funding Costs for that financial period;
- *Funding Costs* comprise all interest, charges and fees related to funding; and
- Extraordinaries* are items that are not expected to occur frequently and are distinct from your ordinary operations.

(c) **The Purchaser shall provide the Vendor, in a timely manner, with**

- (i) quarterly management accounts; and
- (ii) annual audited financial statements

all containing a Profit and Loss Statement and Balance Sheet and sufficient information to enable the Vendor to determine whether the Financial Covenants are being complied with. In the event that the financial statements disclose a breach of the Financial Covenants, the Purchaser will have 7 days from the date notice of the breach is given by the Vendor to the Purchaser to rectify the breach. In the event the



breach is not rectified in that period the Principal Sum shall be immediately repayable upon demand.

14. Rental Increase

- 14.1 In the event that Option 3 or 4 in Clause 12 is selected, the Vendor will, as soon as reasonably practicable, advise each of the tenants of the Property that his or her rental shall increase by 11% per annum commencing not later than the settlement date.**
- 14.2 The Vendor shall use its best endeavours to ensure that notice of increased rental is received by each tenant at least 60 days before the settlement date, in order to comply with the provisions of the Residential Tenancies Act 1986 relating to rent increases.**

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SCHEDULE 1

Part 1 - Encumbrance Instrument for Donny Avenue Property

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Encumbrance Instrument
(Section 101 Land Transfer Act 1952)

Land registration district

South Auckland

Affected instrument identifier
and type (if applicable)

All/part

Area/Description of part or stratum

s7(2)(a)

All

Encumbrancer

Hamilton City Council

Encumbrancee

Hamilton City Council

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Fee Simple

Encumbrance Memorandum Number

N/A

Nature of security

State whether sum of money, annuity or rentcharge and amount

Annual rent charge – refer clause 1 of Annexure Schedule A

Operative clause

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above certificate(s) of title or computer register(s) with the above rent charge, to be raised and paid in accordance with the terms set out in the Annexure Schedules and so as to incorporate in this encumbrance the terms and other provisions set out in the Annexure Schedules for the better securing to the Encumbrancee the payments secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Annexure Schedule A – Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

"Annual Rent Charge" means \$60,000.00 plus the CPI Adjustment plus GST per annum.

"Continuous Occupation" in respect of a Pensioner Housing Unit means personal occupation of that Pensioner Housing Unit for a minimum of 320 days in each calendar year.

"CPI Adjustment" means any increase in the CPI (All Groups) published by Statistics New Zealand or other Government agency and any revised, replacement or substituted index using the following formula:

$$A = B \times C$$

A = the CPI reviewed Annual Rent Charge from the 31 January 2016

B = the Annual Rental Charge payable immediately before the 31 January 2016

C = CPI for the year ending 31 January 2016

If the CPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the CPI, or a resetting of the CPI, an appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement by an expert appointed by the president or vice president of the New Zealand Law Society will be used.

"Current Tenant" means a natural person who is a tenant of a Pensioner Housing Unit constructed on the Land

[Handwritten signature]

at the date of this Encumbrance.

"Encumbrance" means this encumbrance instrument.

"Encumbrancee" means The Hamilton City Council.

"Encumbrancer" means, except where the context requires otherwise, the registered proprietor of the Land for the time being.

"Land" means the land comprised in the Affected Instrument Identifier(s) identified on the front page of this instrument.

"Minimum Unit Number" means, in the context of the minimum number of Pensioner Housing Units to be constructed or maintained on the Land, six units.

"Pensioner Housing" means the provision of Pensioner Housing Units for the occupation of Pensioner Housing Clients

"Pensioner Housing Client" means a person who holds New Zealand Citizenship or New Zealand Permanent Residency and who is 60 years of age or older, and:

- (a) has assets of a value of less than \$25,000 (not including personal items such as a vehicle or furniture) inclusive of the value of any asset sold within five years of assessment; and
- (b) has an income of less than \$25,000 plus the CPI adjustment per annum inclusive of all wages, salary, investments, and any income or capital payments derived from any trust, a New Zealand or overseas benefit of any nature, or any superannuation or insurance scheme; and
- (c) demonstrates the ability to live independently and is in need of long-term accommodation; and
- (d) is able to provide evidence of having a good tenancy history and or credit rating; provided that

where occupation of a Pensioner Housing Unit is sought by two or more persons, the above criteria shall apply to each of them, except that the combined value of the assets of all of the applicants shall not exceed \$45,000 (not including personal items such as a vehicle or furniture) inclusive of the value of any asset sold within five years of the assessment.

"Pensioner Housing Unit" means a residential accommodation unit constructed or maintained on the Land for the purpose of provision of affordable accommodation for one or more Pensioner Housing Clients.

"Secured Obligations" means the obligations secured by this Encumbrance as set out in Appendix 2.

"Specified Period" means the period commencing on the date of execution of this encumbrance and expiring 25 years after that date.

"Term" means 99 years from the date of this instrument, or such date by which all of the Secured Obligations imposed on the Encumbrancer have been fully satisfied to the satisfaction of the Encumbrancee.

"Working Day" has the same meaning in section 4 of the Property Law Act 2007.

1.2 Interpretation

- (a) **Headings:** clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this instrument.
- (b) **Clauses:** references to clauses are references to clauses of this instrument.
- (c) **Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality; and, where the context requires, include the successors and assigns of such persons.
- (d) **Defined Expressions:** expressions defined in the main body of this Encumbrance bear the defined meaning in the whole of this Encumbrance.
- (e) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- (f) **Statutes and Regulations:** references to a statute include references to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute

or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.

- (g) **Joint and Several Liability:** an obligation by two or more persons binds those persons jointly and each of them severally.

2. ENCUMBRANCE

2.1 The Encumbrancer:

- (a) encumbers the Land for the benefit of the Encumbrancee for the Term with the Annual Rent Charge to be paid to Encumbrancee by the first day of June in each year if demanded in writing, in accordance with clause 2.5, not later than 10 working days prior to that date; and
- (b) covenants with and for the benefit of the Encumbrancee that the Encumbrancer will perform and observe the Secured Obligations.

2.2 The Encumbrancee may at its absolute discretion, where it is satisfied that special circumstances exist, by written notice, waive compliance with one or more of the Secured Obligations, upon such terms and conditions as the Encumbrancee, in its absolute discretion, thinks fit.

2.3 The intention of this Encumbrance is to secure the ongoing performance by the Encumbrancer of the Secured Obligations and the Encumbrancer shall only be entitled to a release of this Encumbrance upon it being established to the Encumbrancee's reasonable satisfaction that the covenants set out in this Encumbrance have been fully performed or have otherwise become obsolete.

2.4 The covenants in this Encumbrance to be observed and performed by the Encumbrancer shall be enforceable only against the registered proprietor from time to time of the Land and not otherwise against the Encumbrancer's predecessors and successors in title; **PROVIDED HOWEVER THAT** in the event of a breach of any of the Secured Obligations, liability for remedy of such a breach shall lie with the registered proprietor of the Land at the time of the breach and with every subsequent registered proprietor of the Land until such breach has been fully remedied and all costs in respect of the remedy of that breach have been paid in full.

2.5 The Encumbrancee shall only be entitled to make demand for the Annual Rent Charge in accordance with clause 2.1 when, in its reasonable opinion, the Encumbrancer has not complied fully with the terms of this Encumbrance.

2.6 After the end of each calendar year, and prior to 1 June in the year following that calendar year, the Encumbrancer shall be entitled to request written confirmation from the Encumbrancee that it has complied fully with the terms of this Encumbrance. For the purposes of ascertaining the Encumbrancer's compliance with this Encumbrance, the Encumbrancer will grant to the Encumbrancee such reasonable access to its property and records as is requested by the Encumbrancee.

2.7 The Encumbrancer and Encumbrancee acknowledge and agree that the Annual Rent Charge is a good-faith pre-estimate of the cost to the Encumbrancee of a breach of the Encumbrancer's obligations under this Encumbrance.

2.8 The requirement to pay the Annual Rent Charge under this Encumbrance is in addition to the other obligations of the Encumbrancer under this Encumbrance and payment of the Annual Rent Charge does not relieve the Encumbrancer from meeting its other obligations, nor does it limit or affect the remedies available to the Encumbrancee, under this Encumbrance.

3. BACKGROUND

3.1 The Encumbrancer acknowledges and confirms the matters set out in the Background in Appendix 1.

4. COSTS

4.1 Each party will pay their own costs of the preparation of this Encumbrance; the Encumbrancee shall pay the costs of its registration; and the Encumbrancer will pay all other costs arising out of and in connection to this Encumbrance or its implementation, or the provision of a discharge of it, including without limitation the Encumbrancee's solicitors' reasonable legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of this Encumbrance, or of the consideration and provision of any consent (whether or not such consent is granted) hereunder.

5. DISCHARGE OR REDEMPTION

5.1 The Encumbrancer irrevocably covenants with the Encumbrancee for the Term that, until the Secured Obligations have been fully performed to the reasonable satisfaction of the Encumbrancee, or have otherwise become obsolete:

- (a) the Encumbrancee will have no obligation to discharge this Encumbrance under section 97 of the

Property Law Act 2007 or otherwise;

- (b) the Encumbrancer will not take any steps whatsoever, including, without limitation, pursuant to section 97 of the Property Law Act 2007 or section 115 of the Property Law Act 2007 to redeem or discharge this Encumbrance, or pursuant to section 317 of the Property Law Act 2007 to have this Encumbrance revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land;
 - (c) the Encumbrancer will not support any such steps being taken by a third party; and
 - (d) the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to have this Encumbrance discharged, redeemed, revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land.
- 5.2 To avoid any doubt:
- (a) if the Secured Obligations are of a restrictive nature, for example by requiring the Encumbrancer not to do something, the performance of those obligations will require the Encumbrancer to observe and comply with those restrictions; and
 - (b) where the Secured Obligations are of a continuing nature, they will be treated as not having been fully performed for as long as they are capable of still being performed, observed or complied with.
6. **IMPLIED TERMS**
- 6.1 Sections 71, 203 and 205 of the Property Law Act 2007 apply to this Encumbrance (without prejudice to the Encumbrancee's rights of action at common law as rent-chargee), except that no covenants on the part of the Encumbrancer and its successors in title are implied in this Encumbrance other than the covenant for the further assurance implied by section 154 of the Land Transfer Act 1952. For the avoidance of doubt, the Encumbrancee does not have a power of sale in relation to the Land.
- 6.2 The Encumbrancer shall be entitled to a release of this Encumbrance where:
- (a) the Encumbrancer is able to demonstrate to the Encumbrancee, upon reasonable grounds, that the Secured Obligations have been fully satisfied or otherwise have become obsolete; and
 - (b) in such circumstances the Encumbrancee shall provide the Encumbrancer with a full release of this Encumbrance.
7. **STATUS OF ENCUMBRANCE**
- 7.1 This Encumbrance shall be registered as a first registered charge against the Land.
8. **CONSENT OF ENCUMBRANCEE NOT REQUIRED FOR SUBSEQUENT INSTRUMENT**
- 8.1 The Encumbrancee's consent shall not be required for the registration of any instrument against the title to the Land where the registration of such instrument ranks subsequent in priority to this Encumbrance.

APPENDIX 1

BACKGROUND

- A. The Encumbrancer is the registered proprietor of the Land.
- B. The Encumbrancer intends to continue to utilise the Land for the purposes of the provision of Pensioner Housing.
- C. The Encumbrancee requires that:
 - a) any natural person who was a Current Tenant of a Pensioner Housing Unit erected on the Land at the date of this Encumbrance shall have the opportunity to remain a tenant of a Pensioner Housing Unit on the Land on reasonable terms for the rest of his or her natural life, so long as the Encumbrancer's standard tenancy obligations are complied with; and
 - b) the number of Pensioner Housing Units available for Continuous Occupation on the Land is not reduced below the Minimum Unit Number for the Specified Period.
- D. It is intended that the conditions of ownership of the land referred to in Background C. are obligations that will run with the land.
- E. The parties enter into this Encumbrance accordingly.

APPENDIX 2

1. The Land shall be utilised throughout the Specified Period for the provision of Pensioner Housing.
2. Throughout the Specified Period the Land shall not be transferred, or leased, or licenced for the occupation of any third party (other than a Pensioner Housing Client) without the prior consent of the Encumbrancee, but such consent shall not be withheld in the case of a transfer, lease, or license to a supplier of Pensioner Housing approved in writing for the purpose by the Encumbrancee, and who acknowledges that their occupation of the land is subject to the terms of this Encumbrance.
3. Throughout the Specified Period the Encumbrancer shall ensure that not fewer than the Minimum Unit Number of Pensioner Housing Units shall be available for Continuous Occupation on the Land for the purposes of Pensioner Housing.
4. The Encumbrancer shall permit any Current Tenant to remain in occupancy of his or her Pensioner Housing Unit on the Land for as long as he or she wishes upon the following terms:
 - a. The Current Tenant remains in Continuous Occupation of the Pensioner Housing Unit;
 - b. the Current Tenant meets his or her obligations under the Encumbrancer's standard tenancy obligations that are in place from time to time; and
 - c. Rental is to be determined on a cost recovery basis, but benchmarked against the lower quartile of the market rental index for similar properties in the locality produced by the Ministry of Business, Innovation, and Employment or, if that Ministry does not exist, or does not provide relevant data, by a similar government or independent body; and net rental shall be capped to an affordability limit expressed as a percentage of net income which is recognised as sustainable by providers of Social Housing in the district.
5. The Encumbrancer shall, in the operation of Pensioner Housing Units on the Land, throughout the Specified Period:
 - a. Operate the Pensioner Housing Units on a cost recovery basis, but with rentals to be reviewed regularly from time to time and with rent increases capped having regard to affordability and/or benchmarking against the lower quartile of the market rental index for properties in the locality produced by the Ministry of Business, Innovation, and Employment or some similar government or independent body.
 - b. Maintain all buildings on the Land, and the chattels in those buildings owned by the Encumbrancer, in good condition and repair.
 - c. Not undertake any subdivision or sale of the Land, or the construction of any additional residential buildings thereon, except in the context of or for the purposes of the construction of additional Pensioner Housing Units.
6. The Encumbrancer shall, throughout the Specified Period, and thereafter until no Current Tenant is in occupation of any part of the Land, provide to the Encumbrancee six monthly reports (for the periods ending at the end of June and December in each year) providing the following details:
 - a. The number of units occupied during the period
 - b. How many units were occupied by Current Tenants
 - c. The rental paid for each unit during the period
 - d. Any rent increases made during the period, and the basis upon which such rent increases were calculated
 - e. The maintenance spend on the Land during the period
 - f. Such other information that the Encumbrancee may reasonably request to enable the Encumbrancee to satisfy itself that the Encumbrancer's obligations under this Encumbrance are being complied with
7. The Encumbrancee shall be entitled subject to the rights of the occupants under the Residential Tenancies Act 1986 and otherwise of the Land, upon 48 hours written notice, or without notice in the event of an emergency, to enter onto the Land to inspect the condition of the Land, and to satisfy itself that the Encumbrancer's obligations under this Encumbrance are being complied with.
8. The Encumbrancee may, at its option, at any time during the term of this Encumbrance, undertake a formal audit of the operation of the Land and the compliance with the terms of this encumbrance. The Encumbrancer shall cooperate with such audit and provide, free of charge, such access and information as may reasonably be required to complete it. The audit shall be undertaken at the cost of the Encumbrancee, but in the event that the audit discloses a breach of the obligations of the Encumbrancer under the Encumbrance that is more than trivial, the cost of the audit shall be paid in full by the Encumbrancer upon demand. Failure to pay that cost within 14 days of demand shall be a default under this Encumbrance.

Part 2 – Form of Encumbrance Instrument for Other Properties

A handwritten signature in black ink, appearing to be 'A. W.' or similar, located in the bottom right corner of the page.

Encumbrance Instrument
(Section 101 Land Transfer Act 1952)

Land registration district

South Auckland

Affected instrument identifier
and type (if applicable)

All/part

Area/Description of part or stratum

All

Encumbrancer

Hamilton City Council

Encumbrancee

Hamilton City Council

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Fee Simple

Encumbrance Memorandum Number

N/A

Nature of security

State whether sum of money, annuity or rentcharge and amount

Annual rent charge – refer clause 1 of Annexure Schedule A

Operative clause

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above certificate(s) of title or computer register(s) with the above rentcharge, to be raised and paid in accordance with the terms set out in the Annexure Schedules and so as to incorporate in this encumbrance the terms and other provisions set out in the Annexure Schedules for the better securing to the Encumbrancee the payments secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Annexure Schedule A – Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

"Annual Rent Charge" means [for each Property, the Annual Rent Charge will be calculated by multiplying \$10,000 by the Minimum Unit Number. The Minimum Unit Number for each Property is set out in the table on page 2 of the agreement] plus the CPI Adjustment plus GST per annum.

"Continuous Occupation" in respect of a Social Housing Unit means personal occupation of that Social Housing Unit for a minimum of 320 days in each calendar year.

"CPI Adjustment" means any increase in the CPI (All Groups) published by Statistics New Zealand or other Government agency and any revised, replacement or substituted index using the following formula:

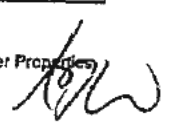
$$A = B \times C$$

A = the CPI reviewed Annual Rent Charge from the 31 January 2016

B = the Annual Rent Charge payable immediately before the 31 January 2016

C = CPI for the year ending 31 January 2016

If the CPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the CPI, or a resetting of the CPI, an appropriate index which reflects the change in the cost of living in New Zealand as



agreed by the parties and falling agreement to be determined by an expert appointed by the president or vice president of the New Zealand Law Society will be used.

"Current Tenant" means a natural person who is a tenant of a Social Housing Unit constructed on the Land at the date of this Encumbrance.

"Encumbrance" means this encumbrance instrument.

"Encumbrancee" means The Hamilton City Council.

"Encumbrancer" means, except where the context requires otherwise, the registered proprietor of the Land for the time being.

"Land" means the land comprised in the Affected Instrument Identifier(s) identified on the front page of this instrument.

"Minimum Unit Number" means, in the context of the minimum number of Social Housing Units to be constructed or maintained on the Land, *[for each Property, refer to the table on page 2 of the agreement]*.

"Secured Obligations" means the obligations secured by this Encumbrance as set out in Appendix 2.

"Social Housing" means the provision of Social Housing Units for the occupation of Social Housing Clients.

"Social Housing Client" means a person who holds New Zealand Citizenship or New Zealand Permanent Residency who:

- (a) is 60 years of age or older or is a person aged younger than 60 but who receives not less than 75% of his or her income from a permanent New Zealand or overseas benefit; and
- (b) has assets of a value of less than \$25,000 (not including personal items such as a vehicle or furniture) inclusive of the value of any asset sold within five years of assessment; and
- (c) has an income of less than \$25,000 plus the CPI adjustment per annum inclusive of all wages, salary, investments, and any income or capital payments derived from any trust, a New Zealand or overseas benefit of any nature, or any superannuation or insurance scheme; and
- (d) demonstrates the ability to live independently and in need of long-term accommodation; and
- (e) is able to provide evidence of having a good tenancy history and or credit rating; provided that

where occupation of a Social Housing Unit is sought by two or more persons, the above criteria shall apply to each of them, except that the combined value of the assets of all of the applicants shall not exceed \$45,000 (not including personal items such as a vehicle or furniture) inclusive of the value of any asset sold within five years of the assessment.

"Social Housing Unit" means a residential accommodation unit constructed or maintained on the Land for the purpose of provision of affordable accommodation for one or more Social Housing Clients.

"Specified Period" means the period commencing on the date of execution of this encumbrance and expiring 10 years after that date.

"Term" means 99 years from the date of this instrument, or such date by which all of the Secured Obligations imposed on the Encumbrancer have been fully satisfied to the satisfaction of the Encumbrancee.

"Working Day" has the same meaning in section 4 of the Property Law Act 2007.

1.2 Interpretation

- (a) **Headings:** clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this instrument.
- (b) **Clauses:** references to clauses are references to clauses of this instrument.
- (c) **Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality; and, where the context requires, include the successors and assigns of

such persons.

- (d) **Defined Expressions:** expressions defined in the main body of this Encumbrance bear the defined meaning in the whole of this Encumbrance.
- (e) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- (f) **Statutes and Regulations:** references to a statute include references to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
- (g) **Joint and Several Liability:** an obligation by two or more persons binds those persons jointly and each of them severally.

2. ENCUMBRANCE

2.1 The Encumbrancer:

- (a) encumbers the Land for the benefit of the Encumbrancee for the Term with the Annual Rent Charge to be paid to Encumbrancee by the first day of June in each year if demanded in writing, in accordance with clause 2.5, not later than 10 working days prior to that date; and
- (b) covenants with and for the benefit of the Encumbrancee that the Encumbrancer will perform and observe the Secured Obligations.

2.2 The Encumbrancee may at its absolute discretion, where it is satisfied that special circumstances exist, by written notice, waive compliance with one or more of the Secured Obligations, upon such terms and conditions as the Encumbrancee, in its absolute discretion, thinks fit.

2.3 The intention of this Encumbrance is to secure the ongoing performance by the Encumbrancer of the Secured Obligations and the Encumbrancer shall only be entitled to a release of this Encumbrance upon it being established to the Encumbrancee's reasonable satisfaction that the covenants set out in this Encumbrance have been fully performed or have otherwise become obsolete.

2.4 The covenants in this Encumbrance to be observed and performed by the Encumbrancer shall be enforceable only against the registered proprietor from time to time of the Land and not otherwise against the Encumbrancer's predecessors and successors in title; **PROVIDED HOWEVER THAT** in the event of a breach of any of the Secured Obligations, liability for remedy of such a breach shall lie with the registered proprietor of the Land at the time of the breach and with every subsequent registered proprietor of the Land until such breach has been fully remedied and all costs in respect of the remedy of that breach have been paid in full.

2.5 The Encumbrancee shall only be entitled to make demand for the Annual Rent Charge in accordance with clause 2.1 when, in its reasonable opinion, the Encumbrancer has not complied fully with the terms of this Encumbrance.

2.6 After the end of each calendar year, and prior to 1 June in the year following that calendar year, the Encumbrancer shall be entitled to request written confirmation from the Encumbrancee that it has complied fully with the terms of this Encumbrance. For the purposes of ascertaining the Encumbrancer's compliance with this Encumbrance, the Encumbrancer will grant to the Encumbrancee such reasonable access to its property and records as is requested by the Encumbrancee.

2.7 The Encumbrancer and Encumbrancee acknowledge and agree that the Annual Rent Charge is a good-faith pre-estimate of the cost to the Encumbrancee of a breach of the Encumbrancer's obligations under this Encumbrance.

2.8 The requirement to pay the Annual Rent Charge under this Encumbrance is in addition to the other obligations of the Encumbrancer under this Encumbrance and payment of the Annual Rent Charge does not relieve the Encumbrancer from meeting its other obligations, nor does it limit or affect the remedies available to the Encumbrancee, under this Encumbrance.

3. BACKGROUND

3.1 The Encumbrancer acknowledges and confirms the matters set out in the Background in Appendix 1.

4. COSTS

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5911200_1:cmg

- 4.1 Each party will pay their own costs of the preparation of this Encumbrance; the Encumbrancee shall pay the costs of its registration; and the Encumbrancer will pay all other costs arising out of and in connection to this Encumbrance or its implementation, or the provision of a discharge of it, including without limitation the Encumbrancee's solicitors' reasonable legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of this Encumbrance, or of the consideration and provision of any consent (whether or not such consent is granted) hereunder.

5. **DISCHARGE OR REDEMPTION**

- 5.1 The Encumbrancer irrevocably covenants with the Encumbrancee for the Term that, until the Secured Obligations have been fully performed to the reasonable satisfaction of the Encumbrancee, or have otherwise become obsolete:

- (a) the Encumbrancee will have no obligation to discharge this Encumbrance under section 97 of the Property Law Act 2007 or otherwise;
- (b) the Encumbrancer will not take any steps whatsoever, including, without limitation, pursuant to section 97 of the Property Law Act 2007 or section 115 of the Property Law Act 2007 to redeem or discharge this Encumbrance, or pursuant to section 317 of the Property Law Act 2007 to have this Encumbrance revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land;
- (c) the Encumbrancer will not support any such steps being taken by a third party; and
- (d) the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to have this Encumbrance discharged, redeemed, revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land.

- 5.2 To avoid any doubt:

- (a) if the Secured Obligations are of a restrictive nature, for example by requiring the Encumbrancer not to do something, the performance of those obligations will require the Encumbrancer to observe and comply with those restrictions; and
- (b) where the Secured Obligations are of a continuing nature, they will be treated as not having been fully performed for as long as they are capable of still being performed, observed or complied with.

6. **IMPLIED TERMS**

- 6.1 Sections 71, 203 and 205 of the Property Law Act 2007 apply to this Encumbrance (without prejudice to the Encumbrancee's rights of action at common law as rent-chargee), except that no covenants on the part of the Encumbrancer and its successors in title are implied in this Encumbrance other than the covenant for the further assurance implied by section 154 of the Land Transfer Act 1952. For the avoidance of doubt, the Encumbrancee does not have a power of sale in relation to the Land.

- 6.2 The Encumbrancer shall be entitled to a release of this Encumbrance where:

- (a) the Encumbrancer is able to demonstrate to the Encumbrancee, upon reasonable grounds, that the Secured Obligations have been fully satisfied or otherwise have become obsolete; and
- (b) in such circumstances the Encumbrancee shall provide the Encumbrancer with a full release of this Encumbrance.

7. **STATUS OF ENCUMBRANCE**

- 7.1 This Encumbrance shall be registered as a first registered charge against the Land.

8. **CONSENT OF ENCUMBRANCEE NOT REQUIRED FOR SUBSEQUENT INSTRUMENT**

- 8.1 The Encumbrancee's consent shall not be required for the registration of any instrument against the title to the Land where the registration of such instrument ranks subsequent in priority to this Encumbrance.

APPENDIX 1

BACKGROUND

- A. The Encumbrancer is the registered proprietor of the Land.
- B. The Encumbrancer intends to continue to utilise the Land for the purposes of the provision of Social Housing.
- C. The Encumbrancee requires that:
 - a) any natural person who was a Current Tenant of a Social Housing Unit erected on the Land at the date of this Encumbrance shall have the opportunity to remain a tenant of a Social Housing Unit on the Land on reasonable terms for the rest of his or her natural life, so long as the Encumbrancer's standard tenancy obligations are complied with; and
 - b) the number of Social Housing Units available for Continuous Occupation on the Land is not reduced below the Minimum Unit Number for the Specified Period.
- D. It is intended that the conditions of ownership of the land referred to in Background C. are obligations that will run with the land.
- E. The parties enter into this Encumbrance accordingly.

APPENDIX 2

- 1. The Land shall be utilised throughout the Specified Period for the provision of Social Housing.
- 2. Throughout the Specified Period the Land shall not be transferred, or leased, or licenced for the occupation of any third party (other than a Social Housing Client) without the prior consent of the Encumbrancee, but such consent shall not be withheld in the case of a transfer, lease, or license to a supplier of Social Housing approved in writing for the purpose by the Encumbrancee, and who acknowledges that their occupation of the land is subject to the terms of this Encumbrance.
- 3. Throughout the Specified Period, the Encumbrancer shall ensure that not fewer than the Minimum Unit Number of Social Housing Units shall be available for Continuous Occupation on the Land for the purposes of Social Housing.
- 4. The Encumbrancer shall permit any Current Tenant to remain in occupancy of his or her Social Housing Unit on the Land for as long as he or she wishes upon the following terms:
 - a. The Current Tenant remains in Continuous Occupation of the Social Housing Unit;
 - b. the Current Tenant meets his or her obligations under the Encumbrancer's standard tenancy obligations that are in place from time to time; and
 - c. Rental is to be determined on a cost recovery basis, but benchmarked against the lower quartile of the market rental index for similar properties in the locality produced by the Ministry of Business, Innovation, and Employment or if that Ministry does not exist, or does not provide relevant data, by a similar government or independent body; and net rental shall be capped to an affordability limit expressed as a percentage of net income which is recognised as sustainable by providers of Social Housing in the district.
- 5. The Encumbrancer shall, in the operation of Social Housing Units on the Land, throughout the Specified Period:
 - a. Operate the Social Housing Units on the Land with rental levels fixed on a cost recovery basis.
 - b. Maintain all buildings on the Land, and the chattels in those buildings owned by the Encumbrancer, in good condition and repair.
 - c. Not undertake any subdivision or sale of the Land, or the construction of any additional residential buildings thereon, except in the context of or for the purposes of the construction of additional Social Housing Units.
- 6. The Encumbrancer shall, throughout the Specified Period, and thereafter until no Current Tenant is in occupation of any part of the Land, provide to the Encumbrancee six monthly reports for the periods ending at the end June and December in each year providing the following details:
 - (a) the number of units occupied during the period;

- (b) How many units were occupied by Current Tenants, and how many utilised for Social Housing purposes;
 - (c) The rental paid for each unit during the period;
 - (d) any rent increases made during the period, and the basis upon which such rent increases were calculated;
 - (e) the maintenance spend on the Land during the period; and
 - (f) such other information that the Encumbrancee may reasonably request to enable the Encumbrancee to satisfy itself that the Encumbrancer's obligations under this encumbrance are being complied with.
7. The Encumbrancee shall be entitled subject to the rights of the occupants under the Residential Tenancies Act 1986 and otherwise of the Land, upon 48 hours written notice, or without notice in the event of emergency, to enter onto the Land to inspect the condition of the Land, and to satisfy itself that the Encumbrancer's obligations under this encumbrance are being complied with
8. The Encumbrancer may, at its option, at any time during the term of this Encumbrance, undertake a formal audit of the operation of the Land and the compliance with the terms of this encumbrance. The Encumbrancer shall cooperate with such audit and provide, free of charge, such access and information as may reasonably be required to complete it. The audit shall be undertaken at the cost of the Encumbrancee, but in the event that the audit discloses a breach of the obligations of the Encumbrancer under the Encumbrance that is more than trivial, the cost of the audit shall be paid in full by the Encumbrancer upon demand. Failure to pay that cost within 14 days of demand shall be a default under this Encumbrance.

GENERAL TERMS OF SALE

Ninth Edition 2012 (2)

1.0 Definitions, time for performance, notices and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "DIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (15) "Property" means the property described in this agreement.
- (16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (20) "Settlement date" means the date specified as such in this agreement.
- (21) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomes and outgoings apportioned at the settlement date.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title under the Unit Titles Act 2010.
- (24) The terms "principal unit", "accessory unit", "unit plan" and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (25) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (26) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit" and "residential property developer" have the meanings ascribed to those terms in the Building Act.
- (27) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (28) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply" and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (29) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day, and
 - (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
 - (c) the day observed as the anniversary of any province in which the property is situated.A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (30) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5 per cent per annum;
 - (b) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.2 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day then the settlement date or the date for fulfilment of the condition shall be the first working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.2(2).

1.3 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by facsimile, or by email; or
 - (iv) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the second working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
 - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;
 - (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;

- (f) In the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
- (6) In accordance with section 20(1) of the Electronic Transactions Act 2002, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.
- 1.4 Interpretation**
- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

2.0 Deposit

- 2.1** The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.
- 2.2** If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3** The deposit shall be in part payment of the purchase price.
- 2.4** The person to whom the deposit is paid shall hold it as a stakeholder until:
- (1) the requisition procedure under clause 5.0 is completed without either party cancelling this agreement; and
 - (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
 - (3) where the property is a unit title:
 - (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and
 - (b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2));
 - (c) have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 148(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
 - (4) this agreement is cancelled pursuant to subclause 5.2(3)(c) or avoided pursuant to subclause 9.8(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor or by completing settlement of the purchase.

3.0 Possession and Settlement

Possession

- 3.1** Unless particulars of a tenancy are included in this agreement the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 3.2** If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
- (1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
 - (2) to re-enter the property on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and fixtures.
- 3.3** Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 3.4** On the settlement date the vendor shall make available to the purchaser keys to all external doors, electronic door openers relating to the property and the keys and security codes to any alarms which may be situated on the property. The vendor does not have to make available keys, electronic door openers and security codes where the property is tenanted and these are held by the tenant.

Settlement

- 3.5** The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 3.6** The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ and prepare in that workspace a transfer instrument in respect of the property; and
 - (2) prior to settlement certify and sign the transfer instrument.
- 3.7** The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
 - (2) prior to settlement have those instruments and the transfer instrument certified, signed and pre-validated.
- 3.8** On the settlement date:
- (1) The balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.13);
 - (2) The vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them as soon as possible for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
 - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.
- 3.9** All obligations under subclause 3.8 are interdependent.
- 3.10** The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

Last Minute Settlement

- 3.11** If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ('last minute settlement'), the purchaser shall pay the vendor:
- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
 - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.12** If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) The purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ('the default period'); but nevertheless this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly.
 - (2) The vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).

Vendor Default: Late Settlement or Failure to give Possession

3.13 (1) For the purposes of this subclause 3.13:

(a) the default period means:

- (i) in subclause 3.13(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in subclause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.13(5), the period from the settlement date until the date when settlement occurs; and
 - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
 - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
 - (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.13(2)(b) during the default period. A purchaser in possession under this subclause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 3.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for income which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such income, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.13(2)(b) during the default period.
- (6) The provisions of this subclause 3.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) Where the parties are unable to agree upon any amount payable under this subclause 3.13:
- (a) An interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined.
 - (b) The interim amount shall be the lower of:
 - (i) the amount claimed; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date.
 - (c) Any interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount.
 - (d) The amount determined to be payable shall not be limited by the interim amount.
 - (e) If the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

Deferment of Settlement and Possession

3.14 If—

- (1) this is an agreement for the sale by a residential property developer of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit—
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form prescribed by the Building (Forms) Regulations 2004) the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).

3.15 In every case, if neither party is ready, willing and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing and able to settle.

3.16 If—

- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.14 or subclause 3.15; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 5.2(2)—
- then the vendor may extend the settlement date—
- (4) where there is a deferment of the settlement date pursuant to subclause 3.14, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (5) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision

3.17 (1) Where—

- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 172A of the Land Transfer Act 1952, of that title is not obtainable by the tenth working day prior to the settlement date—
- then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
- (c) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (d) the regulations procedure under clause 6.0 is complete.
- (2) Subclause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.

4.0 Risk and Insurance

4.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.

4.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:

- (1) If the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation.
- (2) If the property is not untenable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair.
- (3) In the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price.
- (4) If the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 7.4 for when an amount of compensation is disputed.

4.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

Ninth Edition 2012 (2)

5.0 Title, boundaries and requisitions

- 5.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 5.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
(a) the fifth working day after the date of this agreement; or
(b) the settlement date.
- (2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 172A of the Land Transfer Act 1952 is obtainable.
- (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:
(a) The vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice.
(b) If the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement.
(c) If the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.
- (4) In the event of cancellation under subclause 5.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.
- 5.3 (1) If the title to the property being sold is a cross lease title or a unit title and there are:
(a) in the case of a cross lease title:
(i) alterations to the external dimensions of any leased structure; or
(ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted user covenant;
(b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be);
(c) in the case of a cross lease title, to deposit a new plan depicting the buildings or structures and register a new cross lease or cross leases (as the case may be) and any other ancillary dealings in order to convey good title; or
(d) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.
- (2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.
- 5.4 Except as provided by section 7 of the Contractual Remedies Act 1979, no error, omission or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 7.1 but not otherwise, shall be made or given as the case may require.
- 5.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not ensure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

6.0 Vendor's warranties and undertakings

- 6.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
(1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
(a) from any local or government authority or other statutory body; or
(b) under the Resource Management Act 1991; or
(c) from any tenant of the property; or
(d) from any other party; or
(2) given any consent or waiver -
which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 6.2 The vendor warrants and undertakes that at settlement:
(1) The chattels are delivered to the purchaser in reasonable working order, where applicable, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver the chattels shall only create a right of compensation.
- (2) All electrical and other installations on the property are free of any charge whatsoever.
- (3) There are no arrears of rates, water rates or charges outstanding on the property.
- (4) Where an allowance has been made by the vendor in the settlement statement for incomes receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
- (5) Where the vendor has done or caused or permitted to be done on the property any work:
(a) any permit, resource consent or building consent required by law was obtained; and
(b) to the vendor's knowledge, the work was completed in compliance with those permits or consents; and
(c) where appropriate, a code compliance certificate was issued for those works.
- (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
(a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
(b) the building has a current building warrant of fitness; and
(c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
- (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
(a) from any local or government authority or other statutory body; or
(b) under the Resource Management Act 1991; or
(c) from any tenant of the property; or
(d) from any other party -
has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand.
- (9) Any chattels included in the sale are the unencumbered property of the vendor.
- 6.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 6.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
(1) To the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
(2) The building has a current building warrant of fitness; and
(3) The vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 6.4 The vendor warrants and undertakes that on or immediately after settlement:
(1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings the water and wastewater charges shall be apportioned.
- (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
- (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.

- 6.6 (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser. If the purchaser has not validly cancelled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 5.4 and any right of equitable set-off.

7.0 Claims for compensation

- 7.1 If the purchaser claims a right to compensation either under subclause 5.4 or for an equitable set-off:
- (1) The purchaser must serve notice of the claim on the vendor before settlement; and
 - (2) The notice must:
 - (a) in the case of a claim for compensation under subclause 5.4, state the particular error, omission or misdescription of the property or title in respect of which compensation is claimed;
 - (b) in the case of a claim to an equitable set-off, state the particular matters in respect of which compensation is claimed;
 - (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
 - (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 7.2 For the purposes of subclause 7.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given by the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 10.1.
- 7.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 7.4 If the amount of compensation is disputed:
- (1) An interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined.
 - (2) The interim amount must be a reasonable sum having regard to all of the circumstances.
 - (3) If the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society.
 - (4) The stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser.
 - (5) The interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount.
 - (6) The amount of compensation determined to be payable shall not be limited by the interim amount.
 - (7) If the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.
- 7.5 The procedures prescribed in subclauses 7.1 to 7.4 shall not prevent either party taking proceedings for the specific performance of the contract.

8.0 Unit title and cross lease provisions

Unit Titles

- 8.1 If the property is a unit title, sections 144 to 163 of the Unit Titles Act 2010 ("the Act") require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.
- 8.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- (1) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
 - (2) Not less than five working days before the settlement date the vendor will provide:
 - (a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Act; and
 - (b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
 - (3) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.
 - (4) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (5) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
 - (6) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
 - (a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or
 - (b) any proceedings being instituted by or against the body corporate; or
 - (c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
 - (7) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
 - (8) No lease, licence, easement or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
 - (9) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
 - (a) the transfer of the whole or any part of the common property;
 - (b) the addition of any land to the common property;
 - (c) the cancellation of the unit plan; or
 - (d) the deposit of an amendment to the unit plan, a redevelopment plan or a new unit plan in substitution for the existing unit plan which has not been disclosed in writing to the purchaser.
 - (10) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 8.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 8.2(2), the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
 - (2) elect that settlement shall still take place on the settlement date.
- 8.4 If the property is a unit title, each party specifies that:
- (1) The facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Act; and
 - (2) If that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Act.
- 8.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

Unauthorised structures - Cross leases and unit titles

- 8.6 (1) Where structures (not stated in clause 5.0 to be requisitionable) have been erected on the property without:
- (a) in the case of a cross lease (the any required lessors' consent; or
 - (b) in the case of a unit title any required body corporate consent -
- the purchaser may demand within the period expiring on the earlier of:
- (i) the tenth working day after the date of this agreement; or
 - (ii) the settlement date -
- that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.
- (2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 5.2(3) and 5.2(4) shall apply with the purchaser's demand under subclause 8.6(1) being deemed to be an objection and requisition.

9.0 Conditions and mortgage terms

Particular conditions

- 9.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.

- 9.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- that LIM is to be obtained by the purchaser at the purchaser's cost;
 - the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 9.8(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 9.8(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 9.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 9.8(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 9.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required then the purchaser warrants that the purchaser does not require OIA Consent.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- 9.5 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 9.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner.
- 9.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.
- Operation of conditions**
- 9.8 If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- The condition shall be a condition subsequent.
 - The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
 - Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
 - If the condition is not fulfilled by the date for fulfilment, either party may, at any time before the condition is fulfilled or waived, avoid this agreement by giving notice to the other. Upon avoidance of this agreement the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
 - At any time before this agreement is avoided the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.
- Mortgage terms**
- 9.9 Any mortgage to be granted pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 9.10 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.
- 10.0 Notice to complete and remedies on default**
- 10.1 (1) If the sale is not settled on the settlement date either party may at any time thereafter serve on the other party a settlement notice; but
- (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with this agreement or is not so ready able and willing to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession the vendor's right to cancel this agreement will be subject to sections 28 to 30 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 28 of that Act.
- 10.2 Subject to subclause 10.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- on or before the twelfth working day after the date of service of the notice; or
 - on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive -
- time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 10.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 10.1.
- (3) The vendor may give a settlement notice with a notice under this subclause.
- (4) For the purpose of this subclause a deposit is not an instalment.
- 10.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 10.1(3):
- Without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
 - sue the purchaser for specific performance; or
 - cancel this agreement by notice and pursue either or both of the following remedies namely:
 - forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
 - sue the purchaser for damages.
 - Where the vendor is entitled to cancel this agreement the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
 - The damages claimable by the vendor under subclause 10.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
 - interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
 - all costs and expenses reasonably incurred in any resale or attempted resale; and
 - all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
 - Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 10.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser then without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- sue the vendor for specific performance; or
 - cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.

- 10.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 10.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 10.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

11.0 Non-merger

- 11.1 The obligations and warranties of the parties in this agreement shall not merge with:
- (1) the giving and taking of possession;
 - (2) settlement;
 - (3) the transfer of title to the property;
 - (4) delivery of the chattels (if any); or
 - (5) registration of the transfer of title to the property.

12.0 Agent

- 12.1 If the name of a licensed real estate agent is recorded on this agreement it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.

13.0 Goods and Services Tax

- 13.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
- (1) The purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date.
 - (2) Where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date.
 - (3) Where any GST is not so paid to the vendor the purchaser shall pay to the vendor:
 - (a) Interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST.
 - (4) It shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act.
 - (5) Any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1).
- 13.2 If the supply under this agreement is a taxable supply the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 13.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.
- 13.4 (1) Without prejudice to the vendor's rights and remedies under subclause 13.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 10.1.
- (3) The vendor may give a settlement notice under subclause 10.1 with a notice under this subclause.

14.0 Zero-rating

- 14.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement is correct at the date of this agreement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 2 are correct at the date of this agreement.
- 14.3 Where the particulars stated on the front page and in Schedule 2 indicate that:
- (1) The vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) The recipient is and/or will be at settlement a registered person;
 - (3) The recipient intends at settlement to use the property for making taxable supplies; and
 - (4) The recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act -
- GST will be chargeable on the supply under this agreement at zero per cent pursuant to section 11(1)(mb) of the GST Act.
- 14.4 If GST is chargeable on the supply under this agreement at zero per cent pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address and registration number if any of those details are not included in Schedule 2 or they have altered.
- 14.5 If any of the particulars stated by the purchaser in Schedule 2 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 2 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 14.6 If the particulars stated in Schedule 2 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act, the reference in clauses 14.3 and 14.4 to 'the supply under this agreement' shall be deemed to mean the supply under this agreement of the remainder of the property, excluding that part. The supply of that part of the property intended to be used as a principal place of residence will comprise a separate supply in accordance with section 5(15)(a) of the GST Act.

15.0 Supply of a Going Concern

- 15.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated herein:
- (1) Each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) Each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) The parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) The parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at zero per cent.
- 15.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 13.0 of this agreement shall apply.

16.0 Limitation of Liability

- 16.1 If any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that:
 - (a) that person has power to enter into this agreement under the terms of the trust;
 - (b) that person has properly signed this agreement in accordance with the terms of the trust;
 - (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this agreement.
 - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ('the limited amount'). If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

17.0 Counterparts

- 17.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

SCHEDULE 2

(GST Information – see clause 14.0)

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

Section 1

1.	The vendor's registration number (if already registered): 011-174-531	
2.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/ No
3.	The purchaser intends at settlement to use the property for making taxable supplies	Yes /No

If the answer to either or both of questions 2 and 3 is 'No', go to question 6

4.	The purchaser's details are as follows:	
	(a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
5.	The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
	OR	
	The purchaser intends at settlement to use part of the property as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
	That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	
6.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee")	Yes /No

If the answer to question 6 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

7.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
8.	The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 7 and 8 is 'No', there is no need to complete this Schedule any further.

9.	The nominee's details (if known to the purchaser) are as follows:	
	(a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
10.	The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
	OR	
	The purchaser expects the nominee to intend at settlement to use part of the property as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
	That part is: (e.g. "the main farmhouse" or "the apartment above the shop").	

WARNING (This warning does not form part of this agreement)

This is a binding contract. Read the information set out on the back page before signing.

Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Agents Authority.

Signature of vendor(s)

.....
.....

Signature of purchaser(s)

.....
.....
For and on behalf of
..... Accessible Properties NZ Limited